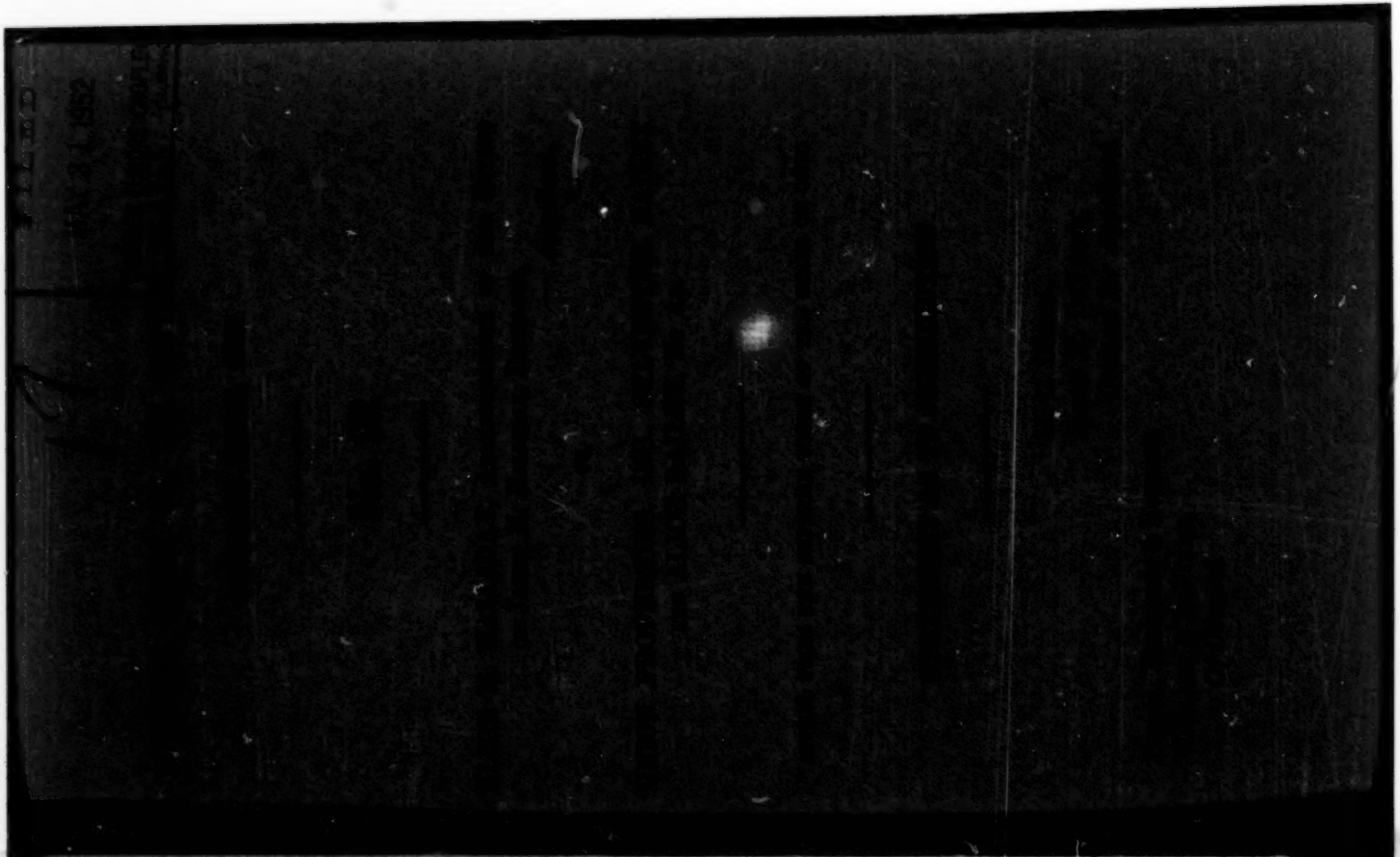


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IN THE SUPREME COURT OF OHIO

No. 32,750

ALICE M. HALLIDAY, Administratrix of the Estate of Janet M. Halliday, Deceased,
Plaintiff-Appellant,
vs.
THE YORK-LAKE CO., Et Al.,
Defendants-Appellees.

STATEMENT AS TO JURISDICTION

Statement As To Jurisdiction

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, plaintiff-appellant submits herewith her statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the Supreme Court of Ohio entered in this cause.

Opinions Below

The Opinion per curiam of the Supreme Court of Ohio is reported in 156 Ohio State 262. Said opinion, the brief opinion of the Court of Appeals of Cuyahoga County, Ohio, and the oral opinion of the Common Pleas Court of Cuyahoga County, Ohio, are attached hereto as Appendix A.

Questions Presented

Where title to land is registered under the Ohio Torrens Act, Section 8572-1 et seq. of the General Code of Ohio, but, in such registration proceedings a known claimant, resident of the State is omitted therefrom and not notified thereof by personal or resident service of notice, as required by said Act, are said proceedings void and a nullity to such known claimant because violative of the "due process" clause of the Fourteenth Amendment to the Constitution of the United States and, therefore, does the original registrant, and any subsequent purchaser therefrom, take said land subject to the right of said known claimant to reclaim the same, even though said right is not asserted within the period prescribed by said Act and despite the provisions of said Act which provide that a decree of registration secured thereunder shall be absolutely conclusive upon and against all persons?[1]

Jurisdiction

The judgment of the Supreme Court of Ohio, dismissing plaintiff's appeal "for the reason that no debatable constitutional question is involved", was entered on November 14, 1951. A petition for appeal is presented to the Supreme Court of Ohio herewith, to-wit, on February 11, 1952.

The jurisdiction of the Supreme Court to review the final judgment of the Supreme Court of Ohio by appeal is conferred by Title 28, United States Code Section 1257, which provides, in so far as applicable here, as follows:

> "Final judgments or decrees rendered by the highest court of the state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> • • • • • • •

[1] All the points raised in the Assignment of Errors are also presented. The Question Presented stated above sets forth the major issue.

> "2. By appeal, where is drawn in question the validity of the statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The Federal questions sought to be reviewed were raised at the earliest possible moment and urged throughout all the proceedings in the courts of Ohio.

In the Common Pleas Court of Cuyahoga County, Ohio, in appellant's motion for a new trial, her brief in support thereof questioned the constitutionality of the Ohio Torrens Act, Section 8572-1 et seq. of the General Code of Ohio, on appeal to the Court of Appeals, in appellant's brief accompanying said appeal, on page 17 thereof, it is stated:

> "9. Torrens proceedings are in the nature of quiet title, and under both state and federal constitutions, persons having interests in land sought to be certified, who are not made parties, cannot in any respect be prejudiced by the proceedings";

and, again, on page 29, it is stated:

> "Of necessity, under all constitutions, an owner cannot be prejudiced without due process of law. To satisfy the requirement of due process the owner, of course, must be made a party. The corporations were not parties at all, and therefore could not be in the least affected by the decree."

The inclusion of Assigned errors in appellant's brief is authorized under said Court's normal procedural interpretation of Rule VII of the Rules of Practice of the Courts of Appeal of Ohio dealing with briefs, assignments of error, and bills of exceptions.

On appeal and motion to certify to the Supreme Court of Ohio from said Court of Appeals, appellant in her assignment of errors, numbers 1 through 4, found on page 7

of her brief, filed in said Court, questioned the validity of the Ohio Torrens Act and contended that as applied or construed it was void since it violated the "due process" clause of the Fourteenth Amendment to the Constitution of the United States. Under the Rules of the Supreme Court of Ohio (Rule II, Section 2; and Rule VIII, Section 3) the brief of the appellant is required to set forth "an assignment of errors" complained of or relied upon.

Although the Court of Appeals did not directly pass upon the constitutional questions, it necessarily did so by implication. And, certainly, the Supreme Court of Ohio must have passed upon them for it dismissed the appeal on the express ground that "no debatable constitutional question is involved."

That the manner of raising the constitutional question is proper and that the jurisdictional requirements are satisfied so that the Supreme Court of the United States has jurisdiction, see: *Chicago, Burlington and Quincy Railroad Company* v. *Chicago*, 166 U.S. 226, 231-232, 41 L. Ed. 979, 17 Sup. Ct. 581; *Matthews* v. *Howe*, 269 U.S. 262, 46 Sup. Ct. 108, 70 L. Ed. 266.

Statutes Involved

The Ohio Torrens Act comprises Sections 8572-1 to 8572-118 of the General Code of Ohio and contains lengthy meticulous provisions. The Sections thereof which are now directly involved are those set forth below, which, in the interests of brevity, have been somewhat shortened.

Section 8572-4, Page's Ohio General Code Anno., Vol. 6, p. 88, in effect, permits any person or corporation claiming "to own or to be seized of or to have the power of appointing or disposing of the legal or equitable estate in fee in and to the whole of any parcel of land," to apply for registration of title thereto.

Section 8572-5, Page's Ohio General Code Anno., Vol. 6, p. 88 provides in part:

> "* * * If the estate of the applicant is subject to any outstanding lesser estate, * * *, or any private easement or other estate or interest of any kind, * * *, each and every of the same, * * *, shall be noted on the certificate of title, and duplicate thereof."

Section 8572-8, Page's Ohio General Code Anno., Vol. 6, p. 89, provides for the necessary content of the application to register land, and, particularly, it so provides that the applicant shall state:

> "(g) whether any other person to the knowledge or information of the applicant, or as shown by the records, has or claims any estate or interest in the lands, buildings or improvements either in law or equity, apparent or real, in possession, remainder, reversion, expectancy or otherwise; and, if any, the name, residence, and postoffice address of each such person and the nature of the estate or interest apparent or real, so held or claimed, and which of said apparent estates and interests are clouds upon applicant's or owner's title."

Section 8572-11, Page's Ohio General Code Anno., Vol 6, p. 90, requires all persons named in the application to be made parties defendant, and to be entered in the caption, and, among other things provides:

> "* * * and all persons not so named, whether mentioned and referred to in the application or not, shall be included and considered as defendants under the designation, which shall appear in the caption of the petition, 'all other persons, if any, having any right or interest or lien upon the lands, or any part thereof, described herein.'"

Section 8572-14, Page's Ohio General Code Anno., Vol. 6, p. 91, requires a general notice to be given by publication

to all parties defendant, for three weeks, and specifically provides that "the names, residences and addresses of all the defendants so far as known" be set forth in said notice.

Section 8572-15, Page's Ohio General Code Anno., Vol. 6, p. 92, requires copies of the published notice be sent "to each and every defendant named in said notice whose address is given or known" by registered mail, and also requires that:

> "The court, shall, so far as it considers it possible, require proof of actual notice to all adjoining owners, and to all persons resident of the state who appear to be in possession or occupancy of or to have any interest in or claim to or lien or charge upon the land or any part thereof included in the application."

Section 8572-18, Page's Ohio General Code Anno., Vol. 6, p. 93, provides in part:

> "By the description in the application and published notice, 'all persons having any interest in or lien upon the land or any part thereof,' all the world except defendants personally served shall be treated and regarded as having been made parties defendant and properly served."

Section 8572-22, Page's Ohio General Code Anno., Vol. 6, p. 94 provides that the decree of registration shall have the effect of an "in rem" decree; that the decree

> "shall be absolutely conclusive upon any against all persons * * *, whether mentioned by name in the application, notice or other papers in the case, * * *, or included in the general description "all other persons, if any, having any right or interest in or lien upon the lands or any part thereof,"

but it may be vacated for fraud within one year after that decree, provided no innocent purchaser for value, mortgage or other lien holder has acquired an interest.

Said section also provides that on expiration of the time for error or appeal, no person shall assert any claim to the registered land in derogation of the decree.

Section 8572-25, Page's Ohio General Code Anno., Vol. 6, p. 96, provides that an applicant who without fraud on his part receives a certificate of title pursuant to said decree and every subsequent purchaser who takes a certificate for value and in good faith, shall hold the same free and clear of all claims except those noted on the certificate and certain enumerated exceptions, including "Fifth: Right of appeal and to prosecute error within thirty days after decree of registration."

Statement of the Case

Appellant, Alice M. Halliday, as Administratrix of the Estate of Janet M. Halliday, deceased, filed a declaratory judgment action in the Court of Common Pleas of Cuyahoga County, Ohio. As such administratrix she succeeded to stock in three corporations, the names of which are hereinafter set forth and, basically, in said declaratory judgment action, she sought a determination of the question of whether the equities of redemption of said corporations in and to certain lands located in Ohio were still in the corporations for, if so, the stock was extremely valuable.

The trial court granted defendants' motion for judgment upon the pleadings and her opening statement, apparently on the ground that the registration of the title to the lands in question under and pursuant to the Ohio Torrens Act was conclusive of all rights and claims thereto, even though the corporations were not parties to the registration proceedings. After appellant's motion for a new trial had been overruled she appealed, but the judgment of the trial court was affirmed. The Court of Appeals likewise held that the registration proceedings were conclusive. On ap-

peal as of right to the Supreme Court of Ohio and motion to certify, said motion was overruled and the appeal was denied on the ground that no debatable constitutional question was presented.

While the record herein is voluminous, the basic question presented is whether the equities of redemption, in and to certain lands in Ohio, are still possessed by the following named corporations: The York-Lake Co., the Richmond Improvement Company, and the Inland Properties Co. The factual situation is set forth below.

In 1930, an action was filed in the Common Pleas Court of Cuyahoga County, Ohio, seeking a judicial dissolution of the three corporations, which court thereafter ordered them dissolved. On appeal on questions of law and fact to the Court of Appeals of Cuyahoga County, Ohio, said Court likewise ordered dissolution of the corporations and reappointed as receiver the person originally appointed by the Common Pleas Court. Motions to certify filed in the Supreme Court of Ohio, were overruled on January 21, 1931.

A year later, in 1932, further proceedings were had in said Court of Appeals in the same appeal cases which Court then made certain orders which were based on the assumption that the prior orders of the Court of Appeals were validly and legally in effect, namely, it was tacitly assumed that the corporations had been legally dissolved and the receiver legally and validly appointed. Said Court entered an order, the material portion of which ordered the three corporations to convey the lands they owned to the receiver theretofore appointed, who in turn was to convey them to one Peter Halliday, the then Administrator of Janet M. Halliday's estate "in trust for the benefit of said estate * * * subject to the liens on said real estate". Said decree was made self-operative and the receiver in 1933 conveyed to Peter Halliday, as ordered.

Before continuing, two contentions of appellant should be noticed:

(1) At this point the corporations had not been legally dissolved, for Section 8623-91 of the General Code of Ohio (Page's Ohio General Code Anno., Vol. 6, p. 237) governing dissolution, provides in part:

"A certified copy of such order of dissolution *shall forthwith be filed* in the office of the secretary of state, *whereupon* the corporation shall be dissolved, and its authority to carry on its business shall cease, but it shall continue for the sole purpose of winding up its affairs." (Italics ours),

nor had the receiver, in the 1930 appellate proceedings, been validly appointed, since Section 11894 of the General Code of Ohio (Page's Ohio General Code Anno., Vol. 9, p. 250), dealing with the grounds for the appointment of a receiver, authorizes same only "* * * when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(2) The 1932 appellate proceedings wherein the three corporations were ordered to convey title to their respective lands were null and void because said Court of Appeals no longer had power or jurisdiction in the causes.

Consequently, the equities of redemption were still in the three corporations and they were necessary parties to any action concerning the lands.

In 1934, three suits were filed to foreclose the equities of redemption in the lands of the corporations on which the Union Trust Co. held relatively small mortgages. Another foreclosure suit was filed in 1938. In none of said suits were the corporations, or any one of them, made parties. These four suits went to decree and sheriff's sale and in each instance the defendant, Union Properties, Inc., a sub-

sidiary of the Union Trust Co., bought in the mortgaged lands.

On April 10, 1943, the defendant, Union Properties, Inc., filed a Torrens suit to register in itself the title to the lands acquired in the foreclosure suits. But in these proceedings, again, the three corporations, or any of them, were not made parties, although the Union Properties, Inc., of necessity, knew of their existence and their rights and claims to said lands for it was the Union Properties, Inc., itself, which filed in the office of the secretary of state, in May, 1945, a certified copy of each journal entry in the 1930 appellate proceedings ordering the corporations dissolved. What was the motivating factor for such uncalled for action on its part and sudden concern with respect to the status of the corporations? And, apart from such personal knowledge, Union Properties, Inc. had actual notice or is chargeable therewith of the rights and claims of the three corporations because the public records revealed no order of dissolution had been filed as required by statute.

After the Torrens decree the Union Properties, Inc. sold the parcels to the defendants, Sylvester T. Dailey, Alice L. Dailey, Marvel Window Cleaner, Inc., Rollo V. Lais, Cleveland Metal Fabricating Co. and Edward B. Meyer.

The Questions Are Substantial

While there are subsidiary questions, the basic question must be: Can the Ohio Torrens Act constitutionally sweep away a property interest without ever having obtained jurisdiction of the owner thereof, where it purports to make registration proceedings thereunder conclusive, even where a known owner is not made a party to the proceedings?

To answer the question affirmatively would be to sweep away the basic and fundamental constitutional right to be

protected in one's property interests and not to be deprived thereof without "due process" of law.

Where a state Torrens Act has been upheld as constitutional, the courts have invariably pointed out that the provisions with respect to notice to claimants were sufficient to satisfy the "due process" requirement, viz., with respect to state residents; personal or registered mail service will meet this requirement; and, with respect to non-residents, service by publication alone or in conjunction with registered mail service will suffice. But, strict compliance with the statutory procedure is essential to cut off a claimant's rights. A known claimant cannot be omitted and thus deprived of his property.

As was said in *Sheaff* v. *Spindler, et al.*, 339 Ill. 540, 555-556, 171 N.E. 632, in an action by a known claimant omitted from registration proceedings under the Illinois Act:

> "It is an elementary principal of law, for which the citation of authority is superfluous, that no adjudication of a court which may deprive a person of his liberty or property is of any validity against him unless it has been rendered with due process of law, which requires notice and an opportunity to be heard. In proceedings strictly *in rem* the seizure of the *res* and the exhibition of the warrant to those in charge may be sufficient, but in proceedings quasi in rem authorized by statute, and in proceedings in personam, the notice given must be that required by statute, whether personal service of summons, publication of notice or other form of substituted service. The State has control of the tenure of property and the method of transfer and evidence of title. . . . The Act itself imposes the kind of notice to be given to the Illinois Land & Loan Company (the known claimant omitted) before the court could enter a decree affecting its interest in the land or claim to it;" (Parenthesis ours).

And, in *Moakley* v. *Los Angeles Pacific Railway Company, et al.*, 99 Cal. App. 74, 77, 277 P. 883, the court said:

> "It is clear from the record that the acts of the petitioners constituted at least constructive fraud, extrinsic in character, and that by reason thereof neither the Turners nor the plaintiff herein were given any notice of the registration proceeding and that, therefore, the court never acquired jurisdiction to bind them by decree.
>
> • • •
>
> "The notice in question is the process by the service of which the court acquires jurisdiction of the parties to whom it is directed. It serves the same purpose as a summons in an ordinary civil action. *No one would contend that jurisdiction of the person of a known defendant can be acquired by publication of a summons in which his name does not appear.*" (Italics ours.)

See also: *Couey* v. *Talalah Estates Corp.*, 183 Ga. 442, 188 S.E. 822; *Kirk* v. *Mullen*, 100 Or. 563, 197 P. 300; *Belmont Powell Holding Co.* v. *Serial Building Loan & Savings Institution, et al.*, 167 App. Div. (New York) 124, 152 N.Y.S. 868.

It is submitted that the Ohio Torrens Act, as applied herein, is unconstitutional since it violates the "due process" clause of the Fourteenth Amendment to the Constitution of the United States and that the Supreme Court of Ohio erred in failing to so hold, or erred in that it erroneously construed said Act in contravention thereto.

The questions presented by this appeal are believed to be substantial and of public importance.

Respectfully submitted,

DEIBEL, ELBRECHT & ROBERTS,
HARRY L. DEIBEL, *Of Counsel,*

and

WALLACH & DEVINNE,
JAMES M. DEVINNE, *Of Counsel.*

EXHIBIT "A"

OPINION OF THE SUPREME COURT OF OHIO

Opinion of the Court of Appeals of Ohio, Eighth District, Cuyahoga County.

Oral Opinion of the Common Pleas Court of Cuyahoga County, Ohio.

OPINION OF THE SUPREME COURT OF OHIO

No. 32,750

ALICE M. HALLIDAY, Administratrix of the Estate of Janet M. Halliday, Deceased, *Plaintiff-Appellant,*

vs.

THE YORK-LAKE CO., et al., *Defendants-Appellees*

It is ordered and adjudged that this appeal as of right be, and the same hereby is, dismissed for the reason that no debatable constitutional question is involved.

Appeal dismissed.

WEYGANDT, C. J., ZIMMERMAN, STEWART, MIDDLETON, TAFT, MATTHIAS and HART, JJ., concur.

OPINION OF THE COURT OF APPEALS OF OHIO, EIGHTH DISTRICT, CUYAHOGA COUNTY

No. 22129

ALICE M. HALLIDAY, Administratrix of the Estate of Janet M. Halliday, Deceased, *Plaintiff-Appellant,*

vs.

THE YORK-LAKE CO., et al., *Defendants-Appellees*

(Phillips, J., Griffith, J., of the Seventh District; Metcalf, J. of the Fourth District sitting by designation.)

By the COURT:

The record, based upon the amended petition and opening statement of counsel for plaintiff plainly indicates that

plaintiff is attempting to collaterally attack title to real property that has been duly registered under the Torrens Act. (Sections 8572-1 et seq. G. C.)

The defendants as purchasers in good faith of registered lands are fully protected as against any allegation relied upon by plaintiff or in her assigned errors.

This being true, there is no justiciable issue here presented as against any of the defendants and the judgment of the trial court, here on questions of law, must be affirmed.

Judgment affirmed. Exc. Order See Journal.

Phillips, P. J., Griffith and Metcalf, JJ. Concur.

Oral Opinion of the Common Pleas Court of Cuyahoga County, Ohio

Tuesday Morning Session, December 5, 1950

The Court: Gentlemen, this matter is before the Court now on motions of all the defendant owners of the record title to the properties that have been described in the second amended petition here if we exclude the claim that the title rests in Midland Properties Company by reason of deeds of conveyance from the original corporation owners.

The Court wishes he had the time to write a little memorandum in this matter, because it is rather involved and because he would like to state in the memorandum more than he can state orally and practically from the bench now.

This action is brought by Alice M. Halliday as the administratrix de bonis non of the estate of Janet Halliday. Her grandmother—I take it that Alice is the daughter of Robert W. Halliday and the granddaughter of Janet?

Mr. Deibel: She is.

The Court: The facts as they appear to the Court now are these:

That Janet Halliday died on January 2, 1929, intestate, leaving Peter Halliday as her spouse and leaving as her only heir at law her son, Robert W. Halliday, still living.

She held all of the shares of stock in three corporations which are named as defendants in this action.

Peter, the father, was appointed administrator of the estate of the mother, Janet. Subsequent to that he filed,

personally, apparently, three lawsuits in this court to dissolve the corporations, one applying, of course, to each corporation. The corporations themselves and Robert W. were made parties defendant in those actions and then he, as administrator of the estate of Janet, filed intervening petitions also asking the same relief, dissolution.

The dissolutions were ordered by this court. The corporations, for some reason, appealed from those orders to the Court of Appeals. Those cases were assigned to what we usually refer to as a foreign Court of Appeals, a Court of Appeals for a district other than our district, but sitting here by designation. For some unknown reason, perhaps, at least to this Court now, no Journal Entry was made by the visiting Judges, but an entry was made on the Journal in the name of Willis Vickery, then a Judge of our Court of Appeals. He, apparently, didn't actually sign that Journal Entry, but it did bear his name and was initialed G. B. D., those initials being, and those, of course, all around this table undoubtedly know of Grace B. Doering who was then the Judge's seeing eye, who was his secretary, he then being totally blind.

It is now alleged that this Journal was not in accordance with the rules of the court itself, this rule having been adopted under the permission, if not actually the command of the statute in that regard. Motions to certify the record were filed in the Supreme Court in those cases. Those motions were overruled. Certified copies of the dissolutions of those corporations were not filed with the Secretary of State until sometime in 1943, in spite of the fact——

Mr. Deibel: '45, I think it was.

The Court: What is that?

Mr. Deibel: April, '45.

The Court: '45?

Mr. Deibel: That's right.

The Court: '45. I had in mind '43, but you say 1945 and I will adopt your date.

Mr. Deibel: It may be we have the date wrong in our petition, but we have certified copies from the Secretary of State's office that it was April, 1945.

The Court: The Court will adopt 1945. In spite of the fact that the orders of dissolution were made in the very early '30s, somewhere around '30, '31 or '32. When these orders of dissolution were made, whether they were effective, or not, the corporations were each the owner of certain parcels of real property.

The York-Lake Company was the owner of a parcel on Clifton Boulevard in Lakewood in the vicinity, I take it, of Nicholson Avenue.

The Richmond Improvement Company was the owner of some parcels or sublots on Richmond Avenue in the southeasterly section of the city, what we usually refer to as being old Newburgh. The Inland Properties Company owned several parcels, or sublots, on East 82nd Street, used to be old Stafford Street, and also a couple of sublots and perhaps a part of a couple of others on Richmond Avenue.

On the theory that these corporations were being dissolved Francis J. Horvath was appointed receiver of either the corporations or the properties and in 1932 a foreign Court of Appeals ordered the corporations to convey their respective parcels of property to Horvath as such receiver. This was not done, but the orders provided that if it was not done that the orders of the court were to effect a conveyance, that is, if the corporations themselves did not convey then the order of the court was to do so.

But the orders of the Court of Appeals further provided that Horvath, as receiver, was to convey the real property which came from the corporations, either by deed or by the decree of the court, to Peter Halliday as administrator of the estate of Janet in trust for the benefit of the estate, subject, of course, to any valid liens then against the various parcels, if any; that the administrator hold this as personalty to be distributed in kind or the proceeds of their sale as personalty.

These decrees were journalized and the receiver conveyed the properties as ordered in those decrees.

Now, we find that in 1933 Peter Halliday seems to have relinquished his office as administrator and W. K. Gardner became administrator of the estate of Janet. Peter Halliday then passed the titles over to the administrator, the new administrator, Gardner.

In 1933 Peter Halliday died testate and leaving only Robert W. as his sole heir at law, although, apparently, not the only beneficiary named in the Peter Halliday will, and then also in the same year, 1933, Gardner resigned as administrator of the estate of Janet and her son, Robert W., was appointed administrator de bonis non in his place.

Gardner, in turn, passed the titles to Robert W. Halliday as his successor administrator. In 1934 Robert undertook to attempt to convey all of the parcels to Mabel F. Halliday, who was his wife. By what authority, if any, is not shown in any pleading here.

In 1938 The Union Trust Company, as mortgagee, instituted foreclosure proceedings to subject the York-Lake Company's property on Clifton Boulevard and Nicholson to the payment of the mortgage debt which it held on that property.

The defendants in that action are Robert personally and as administrator of the estate of his mother, his wife, Mabel F., now deceased, and Arthur B. Gustafson, who, apparently, had then become administrator, probably with the will annexed, of the estate of Peter Halliday, the father.

That piece of property was sold by the sheriff and purchased by the mortgagee's successor, Union Properties, Incorporated.

In 1934 The Union Trust Company, as mortgagee, started a foreclosure action to subject the Richmond Improvement property on Richmond Avenue to the payment of the mortgage debt held by it then. The defendants in that action were the same exactly as the York-Lake property plus the legatees named in the will of Peter Halliday. That property was sold by the sheriff and purchased by the Union Properties, Incorporated, as successor in interest to the original mortgagee.

In 1934, the same year, the Union Trust again started another foreclosure to subject parcel 1 of the Inland Properties Company property on East 82nd Street on which it had a mortgage and the parties defendant are the same as the other foreclosure.

Again the Union Properties Company, Inc., purchased at sheriff's sale.

The Union Trust Company also had a mortgage on parcel 2 of the Inland Properties which was a parcel on Richmond Avenue and in the same year foreclosed on it with the same parties defendant and the Union Properties, Inc., purchased the property at the sheriff's sale.

Subsequent to that, in 1941, the three corporations executed their deeds attempting or purporting to convey their respective properties to the Midland Properties Company, a New Jersey corporation. Apparently then attempting to convey all of the real property described in the second amended petition in this action.

At this point it is safe to say that the Union Properties Company claimed the titles to be in it and that others claimed the titles to be in the Midland Properties Company as grantee of the original corporate owners which have now become its grantor. Now, there are only three parties that could possibly claim any interest in the properties at that point: One, the Union Properties Company; second, the Midland Properties Company and, third, possibly the fiduciaries or some of the heirs of some of these estates.

While matters stood in that position the Union Properties, Incorporated, in April, 1943, filed its application in this court to torrenize all those titles, the titles so assembled by it under these sheriff's sales and parties defendant in those actions included, at least, Midland Properties Company, Alice M. Halliday, Robert W. Halliday, George Kerr as administrator de bonis non of the estate of Janet, and legatees and devisees under the will of Peter Halliday.

Now, we have the title assembled and certainly at that moment we can stop right there and say that we have the parties assembled, we have the property assembled and all of this property belongs to some of those parties.

We must not overlook the fact that the torrenization proceeding is in fact an action to quiet title. That's the real basis of a torrenization suit, and it is important to find that this Court found the title to all of the property, subject to certain matters not in issue here, to be in Union Properties, Inc., at that time and the title was so registered on April 9, 1946, with all the parties who could possibly claim any interest in the property in that action.

If we stop for a moment to look at the picture there it is quite clear that the three original corporations are entirely out of this picture because they have voluntarily conveyed the properties, if they had the right to do so, to the Midland Properties Company. It is possible that they might have some rights, or, at least, interest to protect the conveyances to the Midland Properties Company, but the Midland Properties Company's answer in this case seems to claim only under the right which it supposed it had under the contract with Union Properties, Incorporated, and it has not pled any deed from the three corporations.

Dissolved, or not, these three corporations had already, in 1941, conveyed all of the properties to the Midland Properties Company. As far as they are concerned it makes little difference whether they were dissolved, or not, unless it be that they had some interest to protect in Midland Properties Company.

Now, Midland Properties Company and the entire Halliday household were parties to the registration action and were there adjudicated to be without any interest.

Subsequent to that registration in Union Properties, Incorporated, Union Properties, Incorporated, conveyed the properties and what was originally the York-Lake property in Lakewood was sold in October, 1947, to the defendants Sylvester T. Dailey and Alice L. Dailey and I presume that the title still is in the Daileys.

The Richmond Improvement Company property on Richmond Avenue was sold in May, 1946, to the defendant Marvel Window Cleaner Company, and I assume the title is still in it.

Part of parcel No. 1 of the Inland Properties property was sold in April, 1946, to Parsons Realty and later by it sold to the defendant, Edward B. Meyer.

The remainder of parcel 1 was sold in October, '46, to Perfection Metal Container Company and later by it sold to Cleveland Metal Fabricating Company.

Parcel No. 2 of the Inland Properties property was sold, in 1947, to the defendant Rollo V. Lais.

Now, the parties so named as final purchasers of the respective parcels are holders of Torrens title certificates for their holdings. Those certificates are not certificates

issued on the original registration, but are subsequent issues and removed from the original registrant.

For this Court to now inquire into matters involving titles at a time prior to their registration under the Torrens system or to matters involved in the registration proceedings would be entirely to disregard the faith and credit given to honest judgment and pronouncements of this Court already made in a regular proceeding and which have under every known rule become final.

Now, there is an allegation that an effort was made to correct the records also made in the Court of Appeals; I take it that that matter went to the Supreme Court on motion to certify and was overruled.

There is also an allegation as to the death of Mabel. Now, after all these matters the Court doesn't believe it important in this litigation as he views it at this point. This is not the kind of a proceeding in which holders of Torrens title certificates can be called upon to defend their titles and that being so the motions of the moving defendants for judgment on the pleadings and opening statement must be granted and they are so granted.

It is admitted that there is no property or matters involved in this case beyond the properties already mentioned, those properties which were originally owned by the three corporations in which Mrs. Janet Halliday was the sole stockholder and it naturally follows that the basis of any dispute or issue for adjudication in this Court under the second amended petition as to all other defendants is completely gone and as to them the action will be dismissed at the costs of the plaintiff, and exceptions may be noted.

The Court doesn't see how in the world he can declare any rights in this kind of an action nor give instructions to this administratrix on matters that are not here at all, matters into which the Court cannot inquire. Anything that the Court might do in this case would be purely legal advice. It wouldn't be the pronouncement of the Court.

This may sound very sketchy and unsatisfactory as a statement about the matter, but the Court is quite clear in his own mind that no cause of action has been stated in this second amended petition.

18

MAY 31 1952

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 92

ALICE M. HALLIDAY, ADMINISTRATRIX OF THE ESTATE OF JANET M. HALLIDAY, DECEASED,

Appellant,

vs.

THE YORK-LAKE CO., ET AL.,

Appellees

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT AS TO JURISDICTION. MOTION BY APPELLEES TO DISMISS OR AFFIRM.

CHARLES W. SELLERS,
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IN THE SUPREME COURT OF OHIO

No. 32,750

ALICE M. HALLIDAY, Administratrix of the Estate of Janet M. Halliday, Deceased,

Appellant,

vs.

THE YORK-LAKE CO., ET AL.,

Appellees

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT AS TO JURISDICTION. MOTION BY APPELLEES TO DISMISS OR AFFIRM.

The appellees, Cleveland Metal Fabricating Co., Sylvester T. Dailey, Alice L. Dailey, Rollo V. Lais, Marvel Window Cleaner, Inc., Edward B. Meyer, and Union Properties, Inc., for their joint statement in opposition to appellant's statement as to jurisdiction herein, and in support of said appellees' motion to dismiss the appeal or affirm the judgment of the Supreme Court of Ohio, respectfully state the following.

I. Statement of Issues on Appeal

No cause of action has been presented by the record in this case, which consists mainly of the second amended petition of plaintiff, the answers of the defendants, and the opening

statement of counsel for plaintiff. The undisputed facts are not such as can constitute the basis for the consideration of the question which plaintiff seeks to present in this appeal.

The action is one for declaratory judgment and went to trial in the Common Pleas Court upon the second amended petition of plaintiff-appellant, consisting of fourteen pages of narration of facts concerning prior judicial proceedings brought to final conclusion at various times during a period of more than twenty years preceding the filing of this action. The trial court, upon motion of the defendants at the end of the opening statement of counsel for plaintiff, dismissed the action for the reason that: "no cause of action has been stated in this second amended petition." (Opinion of Judge Blythin, attached to appellant's statement as to jurisdiction.)

Quite contrary to the statements made by appellant in this appeal, the record discloses a complete failure on the part of appellant to establish any interest in the Ohio lands that could have been prejudiced by the Torrenization proceedings regularly conducted pursuant to the Torrens laws of Ohio. Lacking the establishment in this case of any such rights, the assertion by appellant, that the decisions of the Ohio courts in any way violated the "due process clause" of the Fourteenth Amendment of the Constitution of the United States, is entirely unfounded. Appellant cannot challenge the constitutionality of a law on a mere theoretical or conjectural issue.

The question sought to be presented in this appeal is appellant's claim that the Ohio statutes, commonly called the Torrens Act, respecting registration of land titles, comprising sections 8572-1 through 8572-117 of the Ohio General Code, are repugnant to that portion (Section 1) of the Fourteenth Amendment of the Constitution of the United States which forbids the States to deprive any person of

property without due process of law. Appellees deny that the judgments of the Ohio courts involve the question of constitutionality, as claimed here. Appellees also deny that there can be any substantial question of constitutionality of the Ohio Torrens Act, in the light of long-standing decisions of the Supreme Court of the United States.

II. No Substantial Federal Question as to Validity of a State Statute Is Presented by the Appeal

This action, commenced in July of 1949, in the Court of Common Pleas for Cuyahoga County, Ohio, was brought by the administratrix d.b.n. of the estate of Janet M. Halliday, who died January 2, 1929. The plaintiff-appellant's Second Amended Petition sought a declaratory judgment establishing an equity of redemption in certain lands, located in Cuyahoga County, in favor of three corporations, The York-Lake Co., The Richmond Improvement Co. and The Inland Properties Co., all of the stock of which formerly was owned by the decedent, Janet M. Halliday.

In litigation concluded in 1931, the three corporations had been ordered dissolved by the Court of Appeals for Cuyahoga County, and the lands in question, title to which was then held by the three corporations, had been conveyed, pursuant to the decree of dissolution, to the then administrator of Janet M. Halliday's estate. Motion to certify had been overruled by the Supreme Court of Ohio. The then administrator of Janet M. Halliday's estate had been a party to this litigation.

A resume of the facts of this 1930-1931 litigation is to be found in *Halliday* v. *The York Lake Co.*, 125 O.S. 608, 183 N.E. 791 (1932), which concluded a subsequent effort by one of the parties to prosecute error proceedings as of right, following overruling of certain motions by the Court of Appeals.

Subsequently, mortgages previously placed upon the real estate had been foreclosed and the properties had been sold pursuant to decrees of foreclosure. The then administrator of the estate of Janet M. Halliday had been a party in each of the foreclosure proceedings and had contested them in protracted litigation.

The three corporations were not parties to the foreclosure proceedings, having no ostensible claim or interest in the lands following conveyance of their title to the administrator of Janet M. Halliday's estate pursuant to the Court of Appeals decree in the previous litigation.

In 1946, at the instance of Union Properties, Inc., which had purchased the lands at foreclosure, the Court of Common Pleas of Cuyahoga County had decreed registration of title of said lands in Union Properties, Inc., pursuant to the so-called torrens law of Ohio. The appellant complains that the three corporations were not parties to the registration proceedings; although they had been dissolved by final judicial proceedings fifteen years earlier.

Prior to the torrens decree, deeds had been executed in the names of the three dissolved corporations, and said deeds had been recorded, purporting to convey the right and title of each of the three corporations to a corporation called Midland Properties Company. Midland Properties Company and the then administrator of Janet M. Halliday's estate and all her heirs at law were parties defendant in the registration proceedings. The Court of Appeals affirmed the registration decree and appeal of Midland Properties Company was dismissed by the Supreme Court of Ohio. *Union Properties, Inc.* v. *Wedge Protectors, Inc.*, 148 O. S. 148, 73 N. E. 2d 805 (1947).

Following the registration of these lands by torrenization proceedings, the lands were sold to various purchasers. Six appellees in the present action, namely Sylvester T.

Dailey, Alice L. Dailey, Marvel Window Cleaner, Inc., Rollo V. Lais, Cleveland Metal Fabricating Company, and Edward B. Meyer are present owners of portions of said lands, each having acquired his property for value and in good faith, either directly from the original registrant or through intermediate transferees.

In 1949, an attempt was made, in the name of the three corporations, which had been parties to the proceedings by which they were judicially dissolved in 1930-1931, to reopen said proceedings in the Court of Appeals, for correction of alleged errors therein, but this attempt failed. An effort to coerce the Court of Appeals by mandamus collapsed in *State ex rel. Inland Properties Co.* v. *Court of Appeals*, 151 O. S. 174, 84 N. E. 2d 922 (1949).

The Second Amended Petition, in the present action, reasserts the alleged errors in the judicial proceedings of 1931, dissolving The York-Lake Co., The Richmond Improvement Co. and The Inland Properties Co. The equities of redemption of these three corporations, according to the theory of Plaintiff-Appellant, have never been foreclosed and the torrens proceedings by which title of the properties were registered are said to be ineffectual because the three corporations were not parties to them. All this is claimed in the name of the administratrix of the estate of Janet M. Halliday, whose predecessors as fiduciary were parties to all of the litigation the validity of which is now attacked.

In the trial court, the Court of Common Pleas for Cuyahoga County, Ohio, judgment was rendered in favor of defendants (present appellees), upon their motion at conclusion of plaintiff's opening statement, the Court concluding that no cause of action was presented. The trial court's complete comprehension of the facts is shown by its opinion (Exhibit A to appellant's statement as to jurisdiction.) This judgment was affirmed by unanimous decision of the Court of Appeals. The Supreme Court of Ohio dismissed

appellant's appeal, for the reason that no debatable constitutional question was presented to it; and also overruled the appellant's motion for an order directing the Court of Appeals to certify its record, no questions being presented that were of great public interest.

It was obvious that the claimed cause of action, if one ever existed, was res judicata because the plaintiff's predecessors as administrator, and all possible parties in interest, had participated as parties in all of the litigation validity of which was challenged; and that, similarly, the judicial proceedings of 1930-31 dissolving the corporations and transferring title to their lands was not subject to collateral attack.

True, the Common Pleas Court and the Court of Appeals both made reference to the conclusive effect of the registration decree, under the Ohio Torrens Act, as against collateral attack; but the position of the appellant was not such as to entitle her to challenge the constitutionality of the Act. Her second amended petition alleged that both she, individually, and the then administrator of the estate which she later represented, were defendants in the land registration proceeding.

Furthermore the three corporations, whose rights were alleged to have been impaired, had, prior to the rendition of the torrens decree executed and delivered deeds to the Midland Properties Company "purporting to convey all of the parcels of real property above described". The language quoted is from appellant's second amended petition, page 10, last paragraph. Since the second amended petition also alleges that the Midland Properties Company was a party to the torrens proceedings, the grantors can have no rights that are not barred by the registration decree.

There is not a word, in the record of the proceedings in the trial court, to sustain the assertion, in appellant's state-

ment as to jurisdiction, that the Union Properties, Inc., the plaintiff in the land registration proceedings, then knew of any claims asserted on behalf of the three corporations. Union Properties, Inc. bought the properties at foreclosure long after the corporations had been judicially dissolved in litigation to which Union Properties, Inc. was not a party.

If appellant is deprived of property by the Ohio Torrens Act, it must be because the dissolved corporations, all of the stock of which she claims to own, are barred from asserting title to lands by reason of the lands having been registered. Their claims of title, which the trial court herein found groundless, depended upon a chain of highly disputable legal deductions, involving collateral attack on judicial proceedings that had been finally determined. These dissolved corporations were not in possession at the time of the registration proceedings. Their officers had signed and delivered deeds, which were of record, purporting to relinquish all title. It is not surprising that they were not named as parties: it is to set at rest such claims as these that the Torrens Act provides (Section 8572-14, Ohio General Code) for publication of notice to unknown claimants.

The Ohio Torrens Act takes care that all persons whose claims can reasonably be ascertained shall be made parties to registration proceedings, by requiring (Section 8572-13, Ohio General Code) that, in each case, the court cause an examination to be made of both the title and physical condition of the property to be registered. There is no claim that this was not done here, or that any irregularity occurred in the proceedings, saving only (if that be an irregularity) the omission, as parties, of three dissolved corporations whose claims were dependent upon an extremely involved series of legal deductions.

One of the principal purposes of land registration proceedings is to bar all claims such as those asserted here.

Hence, notice of the proceedings is published, as provided in Section 8572-14 of the Ohio General Code. The registration decree becomes conclusive, with certain exceptions, as provided in Section 8572-22 of the Ohio General Code. In significant part Section 8572-22 provides that:

> "Sec. 8572-22. If the court after a hearing finds that the applicant has title in whole or in part as stated in his application, and proper for registration, then to the extent of the title so found a decree of confirmation and registration shall be entered, which shall have the effect of a decree in rem and, subject only to the exceptions stated in section 25 (General Code 8572-25), shall bind the land and all interests, rights and estates therein and liens and charges thereon and, after the expiration of the time to prosecute error or appeal and except as otherwise provided in this act (G. C. 8572-1 to 8572-118), shall be absolutely conclusive upon and against all persons including the state or any political subdivision thereof, whether mentioned by name in the application, notice, or other papers in the case, or as unknown heirs and devisees, or included in the general description 'all other persons if any, having any right or interest in or lien upon the lands or any part thereof,' and whether under disability, not in being, unknown or unascertained; and after the expiration of the time for prosecuting error or appeal, except as otherwise provided in this act (G. C. 8572-1 to 8572-118), no such person shall in any of the courts of this state assert by suit or otherwise any claim to an interest or estate in or lien or charge upon registered land in derogation of or contrary to the purport of such decree. Such decree shall not, after the expiration of the time for prosecuting error or appeal, be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any suit or proceeding at law or in equity for opening up judgments or decrees by reason of a party not having had actual notice of the suit or proceedings; but any person deprived of land or of any estate or interest therein

or lien or charge thereon by a decree of registration obtained by fraud may file a petition in the case to open up and review the same within one year after the entry of the decree, provided no innocent purchaser for value, mortgagee or other lien holder has acquired an interest. If there is any such purchaser, mortgagee or other lien holder, the decree of registration shall not as to them or any person holding under them be opened, but shall remain in force and effect forever, subject only to the right of appeal and to prosecute error. But any person who is aggrieved by such decree in any case may pursue his remedy by action of a tort against the applicant or against any other person for fraud in procuring the decree. * * *"

As stated by Judge Cardozo, when a member of the New York Court of Appeals:

> "Certificates of registration would be worthless if their effect could be undone by evidence that an outstanding right or interest had been misapprehended or omitted. The very purpose of the proceeding is to set such controversies at rest." *City of New York* v. *Wright*, 243 N. Y. 80, 152 N. E. 472, 473 (1926).

If the barring of such claims, as those asserted by appellant, by a torrens registration decree renders the Ohio Torrens Act unconstitutional, then no torrens law can be constitutional. The basic purpose of every such statute is to set at rest all latent title claims.

The Supreme Court of the United States, in *American Land Company* v. *Zeiss*, 219 U. S. 47, 55 L. Ed. 82 (1911), sustained the constitutional validity of land registration statutes of California, designed to quiet titles following destruction of public records on the occasion of the San Francisco earthquake of 1906. In its opinion (219 U. S. pp. 65-67) the Court said:

> "It is to be borne in mind that it has been settled (Griffith v. Connecticut, 218 U. S. 563, and cases cited)

that the Fourteenth Amendment does not operate to deprive the States of their lawful power, and of the right in the exercise of such power to resort to reasonable methods inherently belonging to the power exerted. On the contrary, the provisions of the due process clause only restrain those arbitrary and unreasonable exertions of power which are not really within lawful state power, since they are so unreasonable and unjust as to impair or destroy fundamental rights."

"* * * To argue that the provisions of the statute are repugnant to the due process clause because a case may be conceived where rights in and to property would be adversely affected without notice being actually conveyed by the proceedings is in effect to deny the power of the State to deal with the subject. The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals. * * *"

Similar expressions are to be found in the opinion of Chief Justice Oliver Wendell Holmes, of the Supreme Judicial Court of Massachusetts, in *Tyler* v. *Judges of the Court of Registration*, 175 Mass. 71, 55 N. E. 812 (1900), writ of error dismissed, 179 U. S. 405, 45 L. Ed. 252, upholding the constitutional validity of a Massachusetts torrens law. Benjamin N. Cardozo, as an associate judge of The New York Court of Appeals, wrote the opinion of that court, upholding constitutionality of a New York torrens law, in *City of New York* v. *Wright*, 243 N. Y. 80, 152 N. E. 472 (1926). Both of these eminent judges were afterwards distinguished members of the Supreme Court of the United States.

The "just and reasonable character" of the requirements of the Ohio Torrens are not even called in question by the present appellant, whose claim evidently is that every torrens law that purports to bar claims of persons not

parties to the registration proceeding necessarily contravenes the Fourteenth Amendment.

It is respectfully submitted that the judgment appealed from is sustainable on numerous valid legal grounds that do not depend upon the Torrens Act, and that the question presented by this appeal has long ago been so definitely determined that no substantial question is presented by this appeal entitling appellant to invoke the jurisdiction of the Supreme Court of the United States.

WHEREFORE, appellees respectfully move that the within appeal be dismissed or that the judgment and decree of the Supreme Court of Ohio be affirmed.

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February 26, 1952.

No. 92 19

No. 32,750.

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In the Supreme Court of Ohio

ALICE M. HALLIDAY,
Administratrix of the Estate of Janet M. Halliday,
Deceased,
Plaintiff-Appellant,

vs.

THE YORK-LAKE CO., *et al.,*
Defendants-Appellees.

REPLY BRIEF OF APPELLANT.

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Defendants-Appellees.

REPLY BRIEF OF APPELLANT.

STATEMENT.

The appellees, Union Properties, Inc., Sylvester T. Dailey, Alice L. Dailey, Rollo V. Lais, Marvel Window Cleaner, Inc., Cleveland Metal Fabricating Co., and Edward B. Meyer, having heretofore filed their joint Statement in Opposition to Appellant's Statement as to Jurisdiction, together with a Motion to Dismiss or Affirm, appellant files this, her reply brief thereto, under the provision of Rule 7, paragraph 3, of the Rules of Practice of the Supreme Court of the United States.

ARGUMENT.

The gist of appellees' joint Statement is that no substantial Federal question is involved and this in turn is predicated on the doctrine of res judicata. Consequently, this brief is directed to the question of the applicability of the doctrine of res judicata.

I. The Doctrine of Res Judicata Is Not Available to the Appellees as a Defense.

Needless to say, before the doctrine of res judicata can be properly availed of by a party as a defense it is essential that the parties, issues and facts in former litigation alleged to constitute res judicata be properly and specifically pleaded; and, further, that if such party fails so to plead, the defense is deemed waived. *Clark v. Baranowski,* 111 Ohio St. 436, 145 N. E. 760; *Meiss v. Gill,* 44 Ohio St. 253, 6 N. E. 656; *Harding v. Talbott,* 60 Ohio App. 523, 22 N. E. (2d) 221.

The record here does not disclose compliance with the foregoing requirement, and hence appellant submits that appellees cannot avail themselves of such doctrine as a defense to appellant's action.

II. The Doctrine of Res Judicata Does Not Apply.

Appellees admit that the three corporations were not made parties to the foreclosure proceedings (Appellees' Statement, top page 5) nor made parties to the Torrens proceedings (Appellees' Statement, middle page 5), but assert that since appellant's predecessors in interest, in their capacities as administrators, were made parties to both proceedings, appellant is now precluded from bringing this action on the ground of res judicata.

The fallacy in such argument is manifest when it is noted that the basic issue in the instant case, to-wit, the ownership by the corporations of their equities of redemption in and to certain lands, was not at all pleaded or passed upon in those proceedings; it may have been tacitly, but erroneously, assumed therein that the corporations had

been divested of the ownership; such assumption would be wholly unwarranted. Since the tacit assumption was unwarranted and erroneous, the three corporations not having been made parties to said two prior proceedings, were not and could not be affected by them, and they still possess their equities. This issue of ownership was in no way explicitly involved in said former proceedings. Thus the within action involves issues substantially different from any heretofore litigated.

True, appellant, to a certain extent, is here seeking a determination of the corporations' rights, but the prime purpose is to benefit the Estate of which she is the present administratrix and the nature of her action—declaratory judgment and directions and instructions to her as a fiduciary—is particularly appropriate to that end; the issues now made are new. Moreover, the Court will observe that the three corporations have not in the least questioned the propriety of such procedure. See *Norwood v. McDonald,* 142 Ohio St. 299, 52 N. E. (2d) 67, where at page 307 of the State reporter, the court said:

> "No claim or right of a litigant can be asserted as conclusive under the doctrine of res judicata unless it was considered and determined or necessarily determined to be valid through the rendition of a former judgment. 'Where a judgment or decree is relied on by way of evidence, as conclusive per se, between the parties in a subsequent suit, it must appear by the record of the former suit, that the particular controversy sought to be precluded was therein necessarily tried and determined.' Lessee of Lore v. Truman, 10 Ohio St., 45."

Appellees likewise seek to invoke the doctrine of res judicata on the ground that the ostensible grantee of the

three corporations, i.e. Midland Properties Co., one of the defendants here, was a party to the Torrens proceedings and therefore "the grantors [referring to the three corporations] can have no rights that are not barred by the registration decree" (Appellees' Statement, page 9). (Matter in brackets added.) But, obviously litigation to which the grantors were not parties is not and can not be binding on the grantors nor can the issues therein adjudicated be deemed res judicata as to the grantors' rights. *Freeman on Judgments* (5th Ed.), § 442, p. 969.

It should also be observed that appellees' denial of knowledge on the part of defendant, Union Properties, Inc. "of any claims asserted by the three corporations" (Appellees' Statement, page 9) is itself effectually refuted by their own statement on the very same page to the effect that the corporations' purported grantee, Midland Properties Co., was made a party to the Torrens proceedings. If it had no knowledge of any claims having been made by the three corporations after the foreclosures, then why was their grantee, the Midland Properties Co., made a party? To this there is no answer, for Midland Properties Co. must have been made a party on an examination of the title records which disclosed the purported conveyances to Midland by the corporations, which of necessity would suggest the claims of the corporations. The record here also shows that for years the corporations have claimed the equities of redemption, as Union Properties Inc. has at all times very well known.

Moreover, with respect to the purported conveyances by the three corporations to Midland Properties Co., it will be seen from the record of this case that appellant con-

tends that said conveyances are void and she is seeking a declaration to that effect.

CONCLUSION.

For the reasons stated it is respectfully submitted that the doctrine of res judicata is not here involved; that appellees have failed to show that no substantial Federal question is presented; and that, since appellees have failed to disclose any grounds making against the jurisdiction of this Court, this Court does have jurisdiction and appellees' motion to dismiss or affirm should be overruled.

Respectfully submitted,

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No. 92. HALLIDAY, ADMINISTRATRIX, *v.* UNION PROPERTIES, INC. ET AL. Appeal from the Supreme Court of Ohio. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. *Harry L. Deibel* and *James M. De Vinne* for appellant. *Charles W. Sellers* for the Cleveland Metal Fabricating Co. et al., appellees. Reported below: 156 Ohio St. 262, 101 N. E. 2d 905.